

REMARKS

This responds to the Office Action dated 13 August 2004. Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and following remarks. Applicant submits herewith a second Declaration of Thomas D. Dickson under 37 CFR.

Claim 1, 7, 8, 11, 41 and 42 are amended. Claim 3 is cancelled. Claims 13-40 were previously cancelled. New claims 43 and 44 are added. Accordingly, claims 1, 2, 4-12 and 41-44 remain pending in the application.

Response to Rejection Under 35 U.S.C. § 112

The Examiner rejected claims 1-12 and 41-42 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing for particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner indicates that it is not clear whether the "blending device" of claims 1, 3, 7-8, 11, and 41-42 is part of the claimed apparatus, or merely a separate apparatus.

Applicant believe that it is clear in the rejected claims that the "blending device" is part of the claimed apparatus. Nevertheless, in an effort to expedite prosecution of the claims, claims 1, 7, 8, 11, 41, and 42 have been amended to further clarify the nature of the "blending device" as part of the claimed apparatus. Claim 3 has been canceled. Accordingly, Applicant respectfully requests that the rejection of claims 1-12 and 41-42 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Response to Rejection Under 35 U.S.C. § 102

The Examiner rejected claims 7 and 41 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,619,901 to Reese et al. The Examiner indicates that Reese et al. teaches all of limitations recited in claims 7 and 41. The Examiner notes that the ice hopper of Reese et al. qualifies as a “refrigeration system” because ice boxes were commonly used as a coolant historically, and Applicant does not limit the term “refrigeration” to *mechanical* refrigeration in the specification or the claims.

Applicant continues to assert that the term “refrigeration” only has meaning to a modern skilled artisan in reference to a mechanical refrigeration cycle. The first Declaration of Thomas D. Dickson, who is skilled in the relevant art, fully supports this assertion. Nevertheless, in an effort to expedite prosecution of the claims, Applicant has amended claims 7 and 41, which are clearly distinguished from Reese et al.

Claim 7 has been amended to recite a “mechanical refrigeration system.” Reese et al. does not identically disclose a mechanical refrigeration system. Therefore, the rejection of claim 7 under 35 U.S.C. § 102(b) over Reese et al. should be withdrawn.

In addition, claim 41 has been amended to recite “a refrigerated foodstuffs supply line disposed within a refrigerated cabinet.” Inasmuch as the ice compartment 18 of Reese et al. comprises a “refrigeration system” and the discharge ports 41 comprise “foodstuffs supply lines” as stated by the Examiner (which Applicant disputes), the discharge ports 41 are not disposed within the ice compartment 18 or any other refrigerated cabinet. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 7 and 41 under 35 U.S.C. § 102(b) over Reese et al.

Response to Rejection Under § 103

The Examiner rejected claims 1, 2, 4-6, 9-12, and 42 under 35 U.S.C. § 103(a) as being unpatentable over Reese et al. in view of U.S. Patent No. 6,326,047 to Farrell. The Examiner states that Reese et al. discloses the limitations of the rejected claims with the exception of the peristaltic pumps. However, the Examiner notes that Farrell discloses a peristaltic pump and that it would have been obvious to incorporate the pump of Farrell with the invention of Reese et al. The Examiner states that the combination would have been obvious in order to provide more operating space in a kitchen by relocating of the fluid tanks of Reese beside or below the blending container.

As the Examiner knows, in order to combine reference teachings under § 103, there must be some motivation to combine reference teachings. However, as supported by the second Declaration of Thomas D. Dickson included with this response, one of skill in the art would have no motivation to combine the teachings of Reese et al. with Farrell. The reasoning offered by the Examiner that a skilled artisan would combine the teachings of Reese et al. with Farrell does not follow logically. The Examiner indicates that moving the fluid tanks of Reese et al. below or beside the blending container would somehow provide more operating space (and require the use of a pump). Applicant submits that the opposite is true. If the fluid tanks of Reese et al. are moved from the stacked arrangement taught to an alternative location beside the blending container, the footprint of the Reese et al. device would be considerably larger, not smaller. Therefore, a changed arrangement of the fluid tanks to the side of the blending container results in less, not more operating room. Certainly less operating room would not motivate a skilled artisan to make such a change, especially when such a change would also require new engineering and design. Applicant contends that a truly skilled

artisan would not reduce operating space, redesign, and complicate a device by adding a mechanical component to an already-working apparatus as suggested by the Examiner. There is simply no motivation to make such a change.

Moreover, if a skilled artisan moved the fluid tanks of Reese et al. below the blending container as suggested by the Examiner, at best, the footprint of the redesigned device would be equal to the footprint of the original device, not smaller as the Examiner has indicated. What would be the motivation to make such a change when, at best, the operation space would be identical, not larger? A person of ordinary skill in the art would have no motivation to complicate a working device with additional hardware and controls that offers no advantage. The advantage offered by the Examiner is erroneous (*i.e.*, there is no additional operating room created by the Examiner's suggestion), and Applicant submits that combining of Reese et al. and Farrell is improper, because there is no motivation for a person of ordinary skill in the art to do so.

In addition, as the Examiner knows, there must be a reasonable expectation of successfully combining reference teachings for a proper § 103 rejection. However, as supported by the attached affidavit of Thomas Dickson, a person of at least ordinary skill in the art would have no reasonable expectation of combining the peristaltic pump of Farrell with the discharge port of Reese et al. The discharge port area 41 of Reese et al. includes a piston subassembly 43 to "precisely portion control the beverage or drink being dispensed." *See* col. 5, ll. 50-52. The existence of the piston subassembly 43 leaves little, if any, room for additional mechanical equipment in the discharge port area 41. The Examiner refers to the discharge port area 41 as a liquid supply line, presumably equating it with the "foodstuffs supply line" presently claimed. There is no

reasonable expectation of successfully combining the peristaltic pump 26 described by Farrell with the liquid supply line 41 of Reese et al. There is simply not enough room to insert the Farrell pump 26 into the Reese et al. liquid supply line and still hope that the features of each can continue to be exploited. Further, the piston subassembly 43 may not be removed from the Reese et al. device without destroying "an important feature" of the apparatus. *See id.* The peristaltic pump 26 needs a generally continuous supply to operate properly, and yet the piston subassembly 43 disposed in the liquid supply line 41 eliminates the possibility of a continuous supply. According to Reese et al., one or the other of the pistons 46, 47 closes the liquid supply line 41 from continuous flow, and closing the liquid supply line is not conducive to peristaltic pump operation.

Accordingly, because there is no motivation to combine the teachings of Reese et al. with Farrell, and no reasonable expectation of successfully combining their teachings, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1, 2, 4-6, 9-12, and 42 under 35 U.S.C. § 103(a) over Reese et al. in view Farrell.

In addition, Applicant notes that the Examiner again ignores each of the limitations of claims 4-6 without any legal basis. As the Examiner knows, a claim rejection must either show that the claim limitations are anticipated or rendered obvious by the prior art. Nevertheless, the Examiner failed to show any prior art disclosing fruit flavored foodstuffs, nutritional supplements, or coffee flavored foodstuffs in combination with a self-contained unit as claimed.

The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Reese et al. in view of U.S. Patent No. 6,173,458 to Maddux. The Examiner states

that Reese et al. discloses the limitations of the rejected claims with the exception of the cleaning location and cleaning liquid supply line. However, the Examiner alleges that Maddux teaches a self-contained device with a sink, liquid soap dispenser, and water line. The Examiner states that it would have been obvious to incorporate the sink and spigot of Maddux into the invention of Reese et al in order to clean the Reese et al. blender.

First, the Maddux patent is nonanalogous art. According to MPEP § 2141.01(a), to rely on a reference under 35 U.S.C. § 103, it must be analogous prior art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must be either in the field of applicant's endeavor, or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). Maddux is directed to a separate, stand-alone, portable sink. The present invention and Reese et al. are directed to a blending station. Consequently, there is no obvious analogy between the two fields. The stand-alone sink may be used side-by-side with a food dispensing kiosk, but there is certainly no indication that the Maddux portable sink is intended to be integrated with a blending station. Blending systems and portable sinks have nothing in common. The combination is therefore improper.

Second, a determination of obviousness hinges on the *claimed invention as a whole*. See, e.g., *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 449 (Fed. Cir. 1986) (in considering obviousness the claimed invention as a whole must be considered, it is error to focus on the distilled "gist" or "core" of the patented invention), *cert. denied*, 484 U.S. 823 (1987); *Windsurfing Int'l, Inc. v. AMF, Inc.*, 782 F.2d 995, 999, (Fed. Cir.) (the focus of the obviousness inquiry is on the claimed invention), *cert. denied*, 477 U.S. 905 (1986). Claim 8 recites an entire

“blending station apparatus,” and the overall apparatus includes a blending container, a foodstuffs supply line, a blending device, a cleaning location, and cleaning liquid supply line. The citation by the Examiner to a stand alone portable sink in relation to a blending station misses the mark of analyzing the claimed invention as a whole.

Third, the combination of Reese et al. and Maddux does not disclose all of the limitations found in claim 8. Claim 8 includes “a cleaning liquid supply line provided at the cleaning location to automatically clean the blending container when placed within the cleaning location.” Neither Reese et al. nor Maddux disclose this “automatic” limitation. A term that is not otherwise defined is given its ordinary meaning, not “its broadest reasonable interpretation” as the Examiner has done. *Hoganas AB v. Dresser Indus., Inc.*, 9 F.3d 948, 951 (Fed. Cir. 1993) (“[T]he words of a claim will be given their ordinary meaning, unless it appears that the inventor used them differently.”). However, the meaning is also shaped by the understanding of the term to those of skill in the art. *Multiform Dessicants, Inc. v. Meo Zan Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998) (“It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed.”). Nevertheless, the Examiner has rejected Applicant’s ordinary meaning of “automatic,” even in light of Thomas Dickson’s first Declaration from a person of skill in the art.

Despite rejecting the ordinary meaning of the term “automatic,” there is no support for the Examiner’s apparent alternative definition for “automatic” that would encompass a manually operated water spigot and sink. Manual operation of a water spigot does not constitute “automatic” to one of skill in the art. Applicant reminds the Examiner that the cleaning locations, etc. comprise part of “a blending station

apparatus" recited in the preamble to claim 8, they do not stand alone like the sink and spigot of Maddux do.

Fourth, there must be a motivation to combine the reference teachings for a proper § 103 rejection. The Examiner points to column 4, lines 57-63 of Reese et al. as an example of Reese et al.'s discussion of cleaning and a sink, apparently as evidence of motivation to combine the teachings of Reese et al. with Maddux. Applicant reproduces the cited lines below, which have nothing to do with cleaning or a sink.

The front compartment 17 houses a plurality of beverage receptacles 20, and the housing 15 is covered by a removable lid 21.

Preferably, the housing 15 is made of a suitable impact-resistant plastic material and is transparent (or at least translucent) so that the levels of the beverages or drink mixes in the respective receptacles 20 (as illustrated by the broken lines in FIG. 1) are readily visible at all times...

The referenced citation would not motivate a person of skill in the art to combine the teachings of Reese et al. with the stand alone sink disclosed by Maddux. The second affidavit of Thomas Dickson included with this response also provides evidence that there is no motivation to combine the reference teachings. There is nothing in the cited references that would motivate integrating a cleaning location with the blending device taught by Reese et al. Maddux teaches a stand alone sink and Reese et al. does not address cleaning locations.

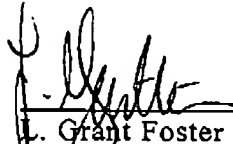
Accordingly, for each of the reasons offered above, Applicant respectfully requests that the Examiner withdraw the rejection of claim 8 under 35 U.S.C. § 103(a) over Reese et al. in view Maddux.

Conclusion

Applicant has made a good-faith effort to resolve all matters with respect to the present application. Applicant respectfully requests a favorable action on the merits. If there are any matters yet to be resolved in connection with this application, Applicant requests the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Respectfully submitted,

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